

The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

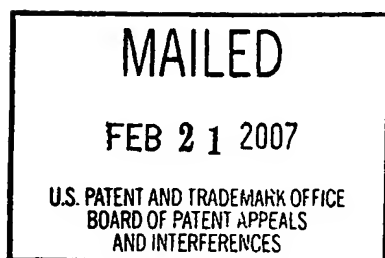
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARK H. MILLER, BRUCE E. WIGTON and  
KENNETH LONNGREN

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Appeal No. 2006-2761  
Application No. 10/806,223  
Technology Center 3600

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HEARD January 11, 2007

Before OWENS, CRAWFORD, GROSS, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1 to 123, which are all of the claims pending in this application.

The appellants' invention relates to a method and device for attracting and trapping or otherwise disabling insects and more particularly to a counterflow device that uses an insect attractant in an outflow from the trap (specification at page 1). An understanding of the invention can be derived from a reading of the claims which are appended to the brief.

#### PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Waters	4,506,473	Mar. 26, 1985
Cheshire, Jr.	5,255,468	Oct. 26, 1993

#### THE REJECTION

Claims 1 to 123 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cheshire in view of Waters.<sup>1</sup>

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (mailed April 21, 2006) for the reasoning in support of the rejection, and to appellants' brief (filed June 24, 2005) and reply brief (filed May 10, 2006) for the arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations that follow.

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<sup>1</sup> We note that the examiner has not listed the rejection made in the final rejection of claims 1 to 123 under the judicially created doctrine of obviousness-type double patenting in the answer. Therefore, we assume that the examiner has withdrawn this rejection in view of the terminal disclaimer filed on November 4, 2004.

The examiner has rejected the claims under 35 U.S.C. § 103. We initially note that the examiner bears the initial burden of presenting a prima facie case of obviousness See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art See In re Bell, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). The examiner is of the opinion that Cheshire discloses the invention as claimed except that Cheshire does not show a carbon dioxide attractant. The examiner relies on Waters for disclosing a carbon dioxide insect attractant and concludes:

... it would have been obvious to provide Cheshire with a carbon dioxide attractant as shown by Waters to attract more insects to the trap. . . it would have been obvious to supply carbon dioxide to a point above the fan to more effectively disperse the carbon dioxide to the area surrounding the trap to attract more insects. . . it would have been obvious to employ a tank to hold the carbon dioxide as opposed to generating the carbon dioxide in a reaction chamber since the function is the same and no stated problem is solved. The examiner takes Official Notice that carbon dioxide tanks are well known in the art relating to the trapping of flying insects. [final rejection at pages 3 to 4].

We will not sustain this rejection because we agree with the appellants that there is no motivation to combine the teachings of the Cheshire and Waters in the manner explained by the examiner. We also agree with the appellants that even if the teachings of Cheshire and Waters were properly combinable, such combination of teachings would not have suggested to a person of ordinary skill in the art at the time of the invention each of the elements of the claimed invention.

In regard to the combinability of the Cheshire and Waters reference, we note that Cheshire discloses a light as an attractant and there is no disclosure in Cheshire that the light is dispersed in the outflow of the fan. Claim 1 recites that the outflow has an insect attractant dispersed therein. Waters teaches that the device therein disclosed is mounted under an insect trap, attached to an insect trap or placed at the cite of any insect trap so that the carbon dioxide is directed into the trap (col. 1, lines 45 to 46, 58 to 60; col. 2, lines 47 to 49). As such, we do not agree with the examiner that there is motivation for combining the teachings of Cheshire and Waters so that carbon dioxide is dispersed in the outflow of a Cheshire type device. In our view,

were a person of ordinary skill in the art to have combined the teachings of Cheshire and Waters, the Waters attractant device would have been mounted on or placed near the Cheshire type device rather than being mounted so that the carbon dioxide is within the Cheshire type device so as to be dispersed in the outflow.

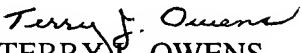
In addition, it is our view that the Cheshire device does not disclose an overlapping region of the inflow and outflow as required by independent claims 1, 24, 39, and 50. We also find that the Cheshire device does not include an outflow outside the device so that the inflow extends substantially to or below an elevation of the outflow opening as required by independent claims 83 and 112.


Cheshire discloses and depicts in Figure 4 that an the inflow can be sensed by an insect at points A, C and D each of which is considerably above the outflow of the device at 31 as depicted in Figure 2. As such, there is no overlap of the inflow and outflow and the inflow does not extend below the elevation of the outflow opening as required by the independent claims.

In view of the foregoing, we will not sustain the rejection of the examiner.

The decision of the examiner is reversed.

REVERSED

  
TERRY J. OWENS  
Administrative Patent Judge

  
MURRIEL E. CRAWFORD  
Administrative Patent Judge

  
ANITA PELLMAN GROSS  
Administrative Patent Judge

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